REMARKS

In an Office Action mailed on January 29, 2008, objections were made to claims 1-28; claims 17-20 were rejected under 35 U.S.C. § 101; and claims 1-28 were provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-47 of copending application Serial No. 10/345,587 (herein called the "'587 application) in view of Chung.

The claims have been amended to remove "it" and "its" for purposes of overcoming the claim objections.

Regarding the § 101 rejections of claims 17-20, independent claim 20 has been amended to recite an origin node that includes a processor. In the § 101 rejections, the Examiner contends that paragraph no. 104 in the specification purportedly defines a node as being software. However, the paragraph merely recites that various elements for distributing file F from an origin node to recipient nodes may be achieved via software, not necessarily that the node itself may be purely software. As stated in paragraph no. 23 of the specification, the recipient nodes may include servers, in accordance with some embodiments of the invention. To clarify that the origin node of claim 17 is not purely software, claim 17 has been amended to recite that the origin node includes a processor. As such, Applicant respectfully requests withdrawal of the § 101 rejections of claims 17-20.

Regarding the double patenting rejections of claims 1-28, Applicant respectfully points out that neither application has been allowed. Therefore, it is premature to address the purported double patenting rejections, as the claims in either application have not been finalized. Applicant points out, however, that the double patenting rejections are defective for at least the reason that Chung fails to teach or suggest the missing claim limitations as contended by the Examiner.

More specifically, the Examiner concedes that the '587 application fails to disclose at least one recipient node of a first group beginning communicating a portion of its respective subfile that it is receiving from a first node to at least one other recipient node before the recipient node(s) fully receives its respective subfile, and the Examiner relies on Chung for the missing limitations. Office Action, p. 5.

The Examiner has failed to establish a *prima facie* case of obviousness-type double patenting for at least the reason that the Examiner fails to show where Chung teaches or suggests the missing claim limitations. In this regard, paragraphs 8, 9 and 16 of Chung, cited by the

Examiner, fail to teach or suggest a recipient node that begins communicating a portion of a subfile, which the first node is receiving, to at least one other recipient node. Instead, paragraph no. 8 of Chung describes dividing a file into subfiles that are distributed and stored on one or more servers and transmitting the subfiles in parallel and simultaneously from one or more of the servers. However this disclosure fails to teach or suggest communicating a portion of a subfile from a recipient node to at least one other recipient node before the recipient node fully receives the subfile. Similarly, paragraphs 9 and 16 fail to teach or suggest the missing claim limitations, as these paragraphs also merely describe a user (the alleged "recipient") that receives multiple subfiles simultaneously from multiple servers. This disclosure does not, however, teach or suggest the missing claim limitations.
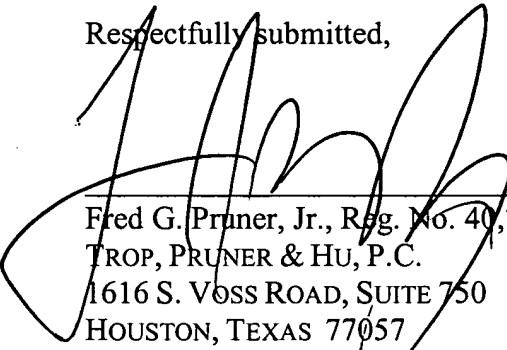
Therefore, in view of the foregoing, Applicant respectfully requests withdrawal of the double patenting rejections.

CONCLUSION

In view of the foregoing, Applicant respectfully requests a favorable action in the form of a Notice of Allowance. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 20-1504 (HPC.0515US).

Respectfully submitted,

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